

REMARKS

Applicant acknowledges receipt of an Office Action dated December 8, 2003. In this response Applicant has amended claim 9 to incorporate the subject matter of claim 10. In addition, Applicant has amended claims 13 and 14 to provide appropriate antecedent basis in light of the amendment to claim 9. Claim 10 has been canceled without prejudice or disclaimer. Applicant has amended claim 9 to focus prosecution of the present application on a particularly preferred embodiment of the disclosed invention and has not been made in response to a statutory rejection. Following entry of these amendments, claims 9 and 11-15 are pending in the application.

Reconsideration of the present application is respectfully requested in view of the foregoing amendments and the remarks which follow.

Rejections Under 35 U.S.C. §103

On page 2 of the Office Action, the PTO has rejected claims 9-15 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 3,290,158 to Treat (hereafter "Treat") in view of U.S. Patent 4,806,332 to Miki (hereafter "Miki"). Applicant respectfully traverses this rejection for the reasons set forth below.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143. Here, Applicant submits that the PTO has not established a proper motivation to modify the references.

In this regard, Applicant notes that a prior art reference must be considered in its entirety, *i.e.*, as a whole. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). See MPEP §2141.02. Here, Miki includes

statements that would lead one skilled in the art away from the modification proposed by the PTO, including col. 1, lines 31-45:

Several methods have been proposed in order to prevent the solidification [of anhydrous potassium fluoride]. As one of such methods, it is known that the anhydrous potassium fluoride is additively coated with several weight % of inorganic insoluble fine powder such as diatomite, talc, etc., to prevent fine particles of the anhydrous potassium fluoride from being in contact with one another. It is also known as another method to adhere a surfactant. In these methods, however, there is a difficulty of how to perfectly adhere additive fine particles to the anhydrous potassium fluoride, and moreover, even if the solidification is effectively prevented thereby, there remains the problem of contamination of impurities. Thus, the foregoing known methods cannot be adopted in practical use.

(Emphasis added). Miki circumvents these problems by adsorbing carbon dioxide gas onto anhydrous potassium fluoride particles. (col. 4, lines 57-61). In Table 1 (col. 3), Miki sets forth data which indicates that his CO₂ treated potassium fluoride particles continued “flowing” after 90 days.

In light of Miki’s general statements that methods which involve coating potassium fluoride with several weight percent of an insoluble fine powder “cannot be adopted in practical use” because of the difficulty in “perfectly adhering additive fine particles to the potassium fluoride and because of the problem of contamination of impurities and in light of Miki’s indication that his potassium fluoride particles remain free flowing for 90 days, Applicant submits that a person of ordinary skill in the art would not have been motivated to combine Miki with Treat, a patent issued 23 years earlier which states that “[t]he conditioners which can be used in the process of this invention are the well known insoluble commercial conditioners which can be utilized in an aqueous slurry” (col. 1, lines 61-63) and that “[t]he mixing in the conveyor and rotating dryer thoroughly coats the wet sodium chloride crystals with conditioner” (col. 2, lines 52-54). Applicant further notes that Treat relates to a process for producing *free-flowing sodium chloride*.

For the foregoing reasons, Applicants submit that the PTO has not established a proper *prima facie* case of obviousness and that the outstanding rejection under §103 should be withdrawn.

If an independent claim is nonobvious under §103, then any claim depending therefrom is nonobvious. *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). See MPEP 2143.03. Thus, Applicants submit that claims 11-15, which ultimately depend from independent claim 9, are also non-obvious.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of this rejection under §103.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully submit that all of the pending claims are now in condition for allowance. An early notice to this effect is earnestly solicited. If there are any questions regarding the application, the Examiner is invited to contact the undersigned at the number below.

Respectfully submitted,

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By 

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The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.116-1.117, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.